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IN THE

Supreme Court of the United States

OCTOBER TERM, 1960

No. 537

JANE ENNIS, *et al.*,

Petitioners,

v.

MARY ANN EVANS, *et al.*,

Respondents.

And six consolidated cases.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF AND APPENDIX FOR RESPONDENTS IN OPPOSITION

LOUIS L. REDDING,
Attorney for Respondents,
923 Market Street,
Wilmington 1, Delaware.

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BRIEF FOR RESPONDENTS IN OPPOSITION

Seven class actions were brought in the United States District Court for the District of Delaware by Negroes against the State Board of Education of the State of Delaware and its employee, the State Superintendent of Public Instruction, to enjoin exclusion on grounds of race from public schools in two of the three counties of that State. On motion of the plaintiffs the decree of the District Court consolidated the cases and granted summary judgment enjoining the discriminatory exclusion and ordering the defendants, petitioners here, immediately to admit the plaintiffs to desegregated education. The United States Court of Appeals for the Third Circuit affirmed; this Court denied certiorari.

On remand to the District Court, a different District Judge undertook to vary the mandate of the Court of

Appeals so as to deny desegregated education to the named plaintiffs and protract desegregation through approval of a grade-a-year desegregation plan. On appeal by the school children, the Court of Appeals reversed. The school children, respondents here, now oppose the petition for a writ of certiorari to review that reversal.

Opinions Below

The relevant opinions below are the following: 152 F. Supp. 886, R. 16a-21a (A12-16), which is the opinion of July 15, 1957, of District Judge Leahy; the affirmance of that opinion, at 256 F. 2d 688 (A32-43); the opinions of District Judge Layton, on remand, at 172 F. Supp. 565 (A44-57) and 173 F. Supp. 891 (A58-60); the reversal at 281 F. 2d 385 (A76-81); 281 F. 2d 390 (A99-100).

Jurisdiction

The basis of jurisdiction is adequately set forth in the petition.

Question Presented

Whether this Court should review a judgment of a Court of Appeals reversing the judgment of a District Court entered after remand and assuming to alter the mandate of the appellate court by ordering a grade-a-year plan of public school desegregation, when the Court of Appeals had affirmed the District Court decree requiring immediate admittance to desegregated public education.

Statement

The petition for certiorari to which this brief is opposed is the second filed in this litigation by the members of the Delaware State Board of Education (hereinafter referred

to as "State Board") and the State Superintendent of Public Instruction (hereinafter, "State Superintendent"), seeking review of two successive judgments of the Court of Appeals designed to effect immediate admittance of plaintiffs to racially nondiscriminatory public education and ordering these petitioners promptly to desegregate public schools in Delaware.

This litigation originated with complaints filed (RA 1-5) in the District Court in Delaware on May 2, 1956, as seven separate class actions by Negro children and their guardians for injunctive relief against exclusion, because of race, from public schools in seven school districts in Kent and Sussex Counties in Delaware. Geographically these are the more southerly of that state's three counties. See footnote 2, opinion of Layton, D. J., in *Evans v. Buchanan*, 172 F. Supp. 508, 511 (A47).

Defendants in each case were the State Board and State Superintendent; and in each case also other defendants were the members of the local, or district, school board in the several school districts where the respective groups of plaintiffs reside.

In each case, the Attorney General of Delaware, representing the State Board and State Superintendent, filed an answer for those defendants. Their answer in each case admitted that plaintiffs had "not been accepted" in the local schools, that the State Board and State Superintendent had not complied with plaintiffs' request to desegregate the local schools, and asserted that desegregation, under regulations promulgated by the State Board, had to be initiated by local school boards (RA6-7).

"V" followed by page number refers to petitioners' appendix; "RA," to respondents' appendix.

In each of the actions also, the local school board of the district involved, represented by its own counsel,[1] filed an answer, offering, in essence, this as a defense:

> "The opposition to school integration is so widespread and of such an emotional character that any action apparently initiated by the local board looking toward integration, and not clearly forced upon the local board by some agency higher in authority than these defendants, would be either ignored completely or overridden by force." (RA 9)

Plaintiffs moved for consolidation of the seven cases and for summary judgment against the State Board and State Superintendent, and these motions were granted on July 15, 1957 (A12-16).

The District Court (Leahy, Chief Judge) had become fully cognizant from the proceedings before it that mutual shifting of responsibility for desegregation by State Board and local boards back and forth between each other was the basic cause of the total denial of plaintiffs' constitutional rights (RA12-17). However, Judge Leahy found that it was the State Board's responsibility to desegregate, since it had general control and supervision over all public schools in Delaware. He also found that its admissions of continued racial segregation in the schools removed "all dispute as to this issue." He declared that, "The regulations of the State Board cannot be permitted to be wielded as an administrative weapon to produce interminable delay. * * * [T]he Supreme Court fixed the law on this problem over three years ago. * * * [N]o appreciable steps have been taken in the State of Delaware to effect full compliance with the law. * * * [T]he right of plaintiffs to public educa-

[1] The Delaware General Assembly, by act approved July 13, 1956, appropriated $35,000 "to be allocated to school districts incurring extraordinary legal expenses," (See 50 Laws of Delaware Ch. 643) to finance the local school boards' defense.

tion unmarred by racial segregation is immutable. * * * [E]ach state faces problems indigenous to its own circumstances. * * * [C]ircumstances in Delaware require racial desegregation to become a reality simultaneously throughout all communities" (A13, 14).

He decreed plaintiffs entitled to racially nondiscriminatory admittance to the schools involved "no later than the beginning of or sometime early in the Fall Term of 1957," and he permanently enjoined the State Board and State Superintendent from refusing such admittance to the named plaintiffs. Further, to "obtain and effectuate admittance * * * and education of said minor plaintiffs," Judge Leahy ordered the State Board and State Superintendent to file within 60 days a "plan of desegregation providing for the admittance, enrollment and education, on a racially nondiscriminatory basis, for the Fall Term of 1957," of pupils in all public schools in Delaware not theretofore desegregated.

The local boards, on the incorrect assumption that Judge Leahy's order was directed against them, moved to amend that order. Reference to such motion shows that it expressed the conclusion that members of the local boards were deprived of "their 'day in court'" because they conceived the order as directed against them even though "no motion for summary judgment was made or pending against these individual defendants." See A17, especially paragraphs (1), (2) and (3).

Thereupon, on August 6, 1957, Judge Leahy held a conference with counsel for all parties (A18-30). There he fully elucidated his order of July 15, stating, *inter alia*, that his "Directions for compliance are [were] aimed specifically at the State Board of Education" (A18-19). They were the defendants "encompassed within the motion for summary judgment," he said, and "The precise matter for decision before me is on the motion for summary judgment" (A28).

At that conference the local board's counsel conceded that they had misinterpreted[2] Judge Leahy's order (A22-25) and voluntarily withdrew their motions to amend it (A29-30).

The order of July 15, 1957, was then stayed pending decision of an appeal by the State Board and State Superintendent.[3] The unanimous affirmance (A32-43) by the Court of Appeals was filed on May 28, 1958, which date was, for all practical purposes, at the end of the school term which began in the Fall of 1957, to which term plaintiffs had been ordered admitted. Necessarily the Court, in affirming, vacated the then *post factum* dates set forth in Judge Leahy's decree for submitting a general plan of desegregation of the schools but "in all other respects" sustained that decree (A43).

The mandate of the Court of Appeals, issued on June 30, 1958, was recalled by the Court, Judge Kalodner dissenting (RA19), to permit the State Board and State Superintendent to petition for certiorari, which this Court denied on October 13, 1958. *Buchanan* v. *Evans*, 358 U. S. 836.

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[2] The transcript of the conference, read in its entirety and in conjunction with the motions to amend, reveals that counsel for the local boards had the misconception that their clients would be in peril of contempt if they did not admit plaintiffs to nondiscriminatory education early in September, 1957, even though the State Board then had not furnished an inclusive plan of desegregation for all schools.

[3] The local boards' counsel filed briefs and participated in oral argument urging the Court of Appeals to sustain Judge Leahy's decree; subsequently they filed briefs opposing State Board's first petition for certiorari. Still later, when plaintiffs appealed on the ground that the grade-a-year plan ordered by District Judge Layton excluded them from racially nondiscriminatory education and did not conform to the Court of Appeals mandate affirming Judge Leahy's decree, the local boards allied themselves with the State Board in the Court of Appeals; and they are here so allied.

On October 27, 1958, the recalled mandate of the Court of Appeals was reissued. The Fall Term of 1958 then having commenced in the public schools of Delaware, plaintiffs' nondiscriminatory admittance, originally ordered for the Fall Term of 1957, was avoided and delayed a second full year. Meanwhile, Chief District Judge Leahy had retired, 152 F. Supp. IX, fn. 2, and the cases were assigned to District Judge Layton.

The District Court was commanded by the mandate of the Court of Appeals to proceed in conformity with the opinion and judgment of the latter Court (RA18) in its affirmance of Judge Leahy's decree. However, despite the express command of the mandate, Judge Layton, on November 19, 1958, deleted language prescribing admittance of the named plaintiffs to racially nondiscriminatory education at the Fall Term of 1957, that is, the school term next ensuing the original judgment, and did not substitute any date for plaintiffs' admittance. Yet, after this deletion of a time for their admittance, the order still contained language stating that plaintiffs were entitled to racially nondiscriminatory admittance and education in the designated schools and enjoining the defendants from refusing them such admittance (RA20). Judge Layton further ordered defendants to submit to the Court within 105 days, later changed to 112 days, a plan of desegregation and set March 17, 1959, for a hearing on that plan.

After this hearing, Judge Layton, on April 24, 1959, filed an opinion (A44-57) approving a grade-a-year plan of desegregation to begin in September, 1959, and to be consummated in 1970 (A63-64). Since this plan initiated desegregation with Grade 1, no child who had begun Grade 1 or any higher grade prior to September, 1959, could ever, under the plan, be admitted to racially nondiscriminatory public education in Delaware. The plan thus necessarily excluded all of the plaintiffs from desegregated education

in Delaware, since all of them were in attendance in schools when the actions were filed in May, 1956.

On July 6, 1959, District Judge Layton signed an order instituting the plan (A61-62).

Plaintiffs appealed, on the grounds (A76), first, that the order entered by Judge Layton invalidly assumed to vary the mandate of the Court of Appeals, which required immediate statewide desegregation and, additionally, that the plan of desegregation ordered by Judge Layton was in conflict with the intent and substance of the decisions of this Court in *Brown* v. *Board of Education of Topeka*, 347 U. S. 482, 349 U. S. 294, in that the plan deprived the plaintiffs forever of access to desegregated public education and failed to satisfy the "with all deliberate speed" and "prompt and reasonable start" requirements in the *Brown* ruling.

The Court of Appeals reversed, categorically sustaining both grounds of appeal (A76-81).

Rehearing was denied the defendants on August 29, 1960, (A96-109). This Court, on September 1, 1960, denied a stay of execution of the judgments below, *Ennis* v. *Evans*, 81 S. Ct. 27, while defendants pursue their present petition for certiorari.

ARGUMENT

I

The decision below was correct because the District Judge had invalidly assumed to vary the prior mandate of the Court of Appeals.

A cardinal principle governing the relationship of subordinate to superior courts is applicable to preclude review by the Court of this, the petitioners' second petition for certiorari. It bars at the threshold consideration of

any of the reasons they advance for granting the writ. This principle affirms that a subordinate court is bound by the mandate, including the decision, of an appellate court as the "law of the case" and cannot vary it "nor intermeddle with it further than to settle so much as has been remanded." *Sibbald v. United States*, 27 U. S. 487; *In re Sanford Fork and Tool Co.*, 160 U. S. 247, 255. Review of the judgment below would trench upon that principle; since that judgment was evoked and occasioned by the disinclination and refusal of the District Court to observe and effectuate the mandate transmitted to it.

Judge Leahy's decree of July 15, 1957, ordered plaintiffs' "admittance, enrollment and education" on a racially nondiscriminatory basis in public schools in their respective, designated school districts "no later than the beginning of or sometime early in the Fall Term of 1957" (A15), and enjoined the defendants from refusing such admittance.

It is apparent from the transcript of the conference of August 6, 1957 (A21-30), that both the State Board and the local boards understood that decree to require what was tantamount to plaintiffs' immediate access to non-segregated education in the designated school districts. At that conference no one disputed that as the meaning or effect of the decree. The only question raised by the boards was as to who were the defendants required to give compliance.

This is made abundantly clear by the contribution made to the colloquy by the then Attorney General, who stated that he thought the State Board's "reason for instructing me to take an appeal was because of this confusion in the minds of many Local Boards as to the impact of your Honor's order" (A26). What he was saying was that the local boards were uncertain as to whether they were the defendants commanded by the order, and the State Board had instructed him to take an appeal to find out. That

uncertainty being clarified by Judge Leahy, the Attorney General indicated that an appeal might not be necessary (A28-29). The Attorney General did not view the order as not giving plaintiffs the right to immediate relief. His concern then was as to whether the State Board could have an extension of time to comply (Id. 29).

Judge Leahy's statements at the conference reinforced the immediacy implicit in the order itself, for the only elasticity given there to the time for compliance is that contained in his words: "I could not sit here in this chair and tell you to do that on September 1st or September 12th or September 23rd." By thus clearly confining the time of plaintiffs' admittance to a period "no later than the beginning of or sometime early in the Fall Term of 1957," he re-emphasized the immediatism prescribed in paragraph 2 of the decree (A15). In the time-circumstance context in which the decree was formulated, and in view of Judge Leahy's adverse criticism of the "delay" and the "deprivation" of plaintiffs' constitutional and "inviolate" rights, his decree definitely and unmistakably ordered plaintiffs' immediate admittance.

That District Judge Layton did assume to vary the decree and the Court of Appeals mandate affirming it when he ordered a plan beginning desegregation only with pupils entering Grade 1 and excluding all the plaintiffs forever from racially nondiscriminatory public education in Delaware, is patent. Clearly it is impermissible and invalid for a subordinate court to attenuate or change the mandate of an appellate court, and the unauthorized variance undertaken by the subordinate court the Court of Appeals rejected in these words:

> "The court below concluded in substance that desegregation at a more rapid rate than that approved by it would prove to be a disruptive and futile proceeding which might do great harm to the Delaware School System.

> "We cannot agree. We affirmed the decree of Judge Leahy which in plain terms required statewide integration of the public school system of Delaware in all classes by an adequate plan by the Fall Term 1957, and which enjoined designated defendants from refusing admission to Negro children on a racially discriminatory basis. The plan approved by the court below is not in accordance with Judge Leahy's decree or with the mandate of this court." (A77)

Thus, the judgment which petitioners seek now to have this Court review eventuated only because of the District Court's disagreement with the prior mandate directed to it by the Court of Appeals.

Granting the petition in these cases would involve this Court in considering whether to reverse an order of the Court of Appeals and reinstate an order of a district court which the appellate court has itself repudiated and reversed as not in accordance with its mandate to the subordinate court. It would reflect upon the right of an appellate court to safeguard its mandate. No principle governing the relationship of courts to each other could be sounder, less amenable to compromise or more productive of chaos if compromised than that a subordinate court may not vitiate the clear mandate of an appellate court or derogate from it. Moreover, to breach the rule in this instance would destroy forever a constitutional right of the plaintiffs.

II

Certiorari should be denied because any conflict arises from departure of the decision of the Sixth Circuit, and not by the instant decision, from principles this Court settled in *Brown*.

The decision in *Kelley* v. *Board of Education of the City of Nashville*, 270 F. 2d 209 (6th C., 1959), differs in result from the instant case in that there, on appeal by Negro school children, an order of the district court

approving a grade-a-year plan of desegregation was affirmed. The differing results in the two cases are referable principally to differing circumstances and facts. A notable difference has already been adverted to. Preliminarily and entirely independent of undertaking an evaluation of the evidence, the Third Circuit had to confront a situation in itself sufficient for reversal, namely, that more than two years earlier it had affirmed a judgment of the district court ordering immediate desegregation and, on remand, a district court judge had sought to override its mandate.

In a strict sense, it is hardly correct to contend, as do petitioners, that there is a "departure from precedent," implying conflict of decision, where two courts of appeals have reviewed dissimilar evidence adduced before district courts in their respective circuits and have come to opinions producing diverse end results. At most, it can be said that each appellate court was impelled to its conclusion by the peculiar nature of the evidence reviewed by it.

The Court of Appeals for the Sixth Circuit in the *Kelley* case concluded that there was evidence to support the district court's judgment. In the instant case in the Third Circuit the appeals court found the evidence of many of the proponents of the grade-a-year desegregation plan "fraught with unreality" (A77). Besides, the latter court disagreed with the district judge as to evidence of disparity in intelligence, or academic achievement potentials. The district judge deemed this a partial justification for the plan, while the appellate court thought it not of such a degree as to prevent mutual desegregated education.

Because there is a very obvious divergence of end result in the two decisions, this divergence could be oversimplified, in broad terms, to characterization as a conflict of decision. In such terms, it can be said that the Sixth Circuit has held that a grade-a-year plan of public school

desegregation, protracting the process over a period of more than a decade, when formulated by a school board and approved by a district court, is not unreasonable vis-a-vis *Brown* v. *Board of Education of Topeka*, 349 U. S. 294 (1955), if the school board's judgment in formulating the plan is supported by evidence. The Third Circuit, on the other hand, has held that such a plan, approved by a district court and ordered to begin in the Fall of 1959, does not follow the intent and substance of the rulings of this Court in *Brown*.

There is a further divergence between the two circuits. In arriving at its decision, the Court of Appeals for the Sixth Circuit acquiesced in the acceptance by the district court of evidence of community disagreement, stemming from tradition, custom and practice hostile to a changeover from a segregated school system. The acceptance of such evidence, however, was in plain disregard of the admonition of this Court in *Brown*, pointedly reiterated in *Cooper* v. *Aaron*, 358 U. S. 1 (1958); that "the vitality of these constitutional principles cannot be allowed to yield simply because of disagreement with them."

On the other hand, the Court of Appeals for the Third Circuit, in rejecting the district court's approval of the twelve-year plan, was adversely critical that "one of the main thrusts of the opinion of the court below" (A79), and this is abundantly apparent from an examination of Judge Layton's opinion at A44-57, derived from the acceptance and consideration given to testimony as to racial prejudice and traditions, customs and practices of racial segregation in the communities involved. Chief Judge Biggs, writing the opinion for the Court of Appeals, referred to *Cooper* v. *Aaron*, *supra*, and commented that this Court "has made it plain * * * that opposition is not a supportable ground for delaying a plan of integration of a public school system." He continued, quoting this Court in *Cooper* v. *Aaron*:

> " 'The constitutional rights of respondents * * * are not to be sacrificed or yielded to * * * violence and disorder * * *.' *We are bound by that decision.*" (A80) (Italics supplied.)

The contrast between the circuits is this: where a major justification for the protracted plan was founded, not on a necessity for time to solve proven administrative problems, as defined by this Court in the second *Brown* decision, but on deference to community disagreement and hostility, factors ruled noncognizable by this Court, the Sixth Circuit approved the grade-a-year plan and the Third Circuit disapproved it. Of this conflict of view we respectfully urge this Court to take notice and to resolve it, not by granting the petition for certiorari, but by denying it and accompanying such denial with specific reaffirmation of the principles which this Court has enunciated and to which the Court of Appeals for the Third Circuit specifically has given adherence.

It is submitted that the foregoing considerations fully support a denial of the petition. However, to the extent that the reply already set forth does not explicitly or impliedly embrace the reasons petitioners advance for granting the writ, we shall undertake below to deal with them.

III

No meritorious reasons are advanced for granting certiorari.

Petitioners' Reasons 2-4, Inclusive

In remanding the cases subsumed under *Brown* v. *Board of Education of Topeka*, 349 U. S. 294 (1955) to the courts which originally heard them to judicially appraise implementation by school authorities of the constitutional principles declared in *Brown*, this Court did not purport to preclude review by appropriate appellate courts. Nor

have appellate courts deemed their normal reviewing function suspended in this type of case. *Aaron* v. *Cooper*, 243 F. 2d 361 (5th Cir., 1957); *Aaron* v. *Cooper*, 257 F. 2d 33, (1958); *Cooper* v. *Aaron*, 358 U. S. 1 (1957); *Booker* v. *Tennessee Board of Education*, 240 F. 2d 689 (6th Cir., 1957) cert. den. 353 U. S. 965; *Jackson* v. *Rawdon*, 235 F. 2d 93 (5th Cir., 1956) cert. denied 352 U. S. 925 (1956).

Petitioners' Reason 5

This reason, like the three immediately preceding it, in essence, challenges the right of the Court of Appeals to make its own evaluation of the factual basis of the judgment of the district court. That the findings of fact of a lower court, in a case involving constitutional rights, should be re-examined and appraised by an appellate court has been clearly recognized by this Court:

> "Yet, when a claim is properly asserted—as in this case—that a citizen has been denied the equal protection of his country's laws on account of his race, it becomes our solemn duty to make independent inquiry and determination of the disputed facts—for equal protection to all is the basic principal upon which justice under law rests." *Pierre* v. *State of Louisiana*, 306 U. S. 354, 358, 59 Ct. 536, 539.

See also *Niemotko* v. *Maryland*, 340 U. S. 268, 271, 71 S. Ct. 325, 327; *Feiner* v. *New York*, 340 U. S. 315, 316, 71 S. Ct. 303, 304; *Watts* v. *Indiana*, 338 U. S. 49, 50-51.

Petitioners' Reason 6

In its opinion of May 28, 1958 (A32-43) affirming the judgment of July 15, 1957, of District Judge Leahy, the Court of Appeals stated that that judgment "was designed to relieve the appellants [State Board] of passivity and compel them to go forward with desegregation of the Delaware schools," *Id.* at 42. The district court opinion thus affirmed had noted "the record of inactivity" of the State

Board "in failing to negotiate a prompt and reasonable start toward full compliance." With the same inactivity prevailing on August 29, 1960, when the amended judgment of the Court of Appeals was filed, it is wholly reasonable that at that late date, "admission to public schools on a racially nondiscriminatory basis with all deliberate speed" required that the still-segregated Delaware schools be ordered "wholly integrated." As against the contention that the Court of Appeals by this order "exceeded the bounds of the federal judiciary," it is respondents' position that the affirmance purports to accomplish no more than did Judge Leahy's decree three years earlier. As indicated in the respondents' Statement, *supra* p. 6, Fn. 3, some of the petitioners, viz., the local school boards, contended in the Court of Appeals for affirmance of that order and later opposed review by this Court. The other petitioners, the State Board and State Superintendent, when they sought to have that earlier decree reversed and that failing, sought review here, did so only on the ground that the State Board was without statutory power to carry out the decree. No other opposition to its scope was made.

Petitioners' Reason 7

The short answer to the contention that Judge Leahy's order required nothing specific as regards speed in the accomplishment of desegregation of all Delaware schools is that paragraph 5 of his decree called for racially nondiscriminatory "admittance, enrollment and education" in the Fall Term of 1957 (A15-16), and his subsequent interpretation of this confined the time to September, 1957. (A22)

Petitioners' Reason 8

Petitioners' contention here relates to the aspect of the judgment below which orders admittance of the named plaintiffs to desegregated education in September, 1960, and postpones until September, 1961, admittance of all

other Negro children whom petitioners were segregating by race in the schools.

This Court in its mandate opinion in *Brown* pointed out "the personal interest of the *plaintiffs* in admission to public schools as soon as practicable on a nondiscriminatory basis." The import of the judgment below is that no sufficient showing was made that immediate admittance of the plaintiffs was impracticable. The court below had affirmed two years earlier a decree of the district court ordering immediate admittance to nondiscriminatory education of the named plaintiffs and all members of the class. It was entirely within the province of the Court of Appeals again to have ordered the same total, simultaneous admittance for the Fall Term of 1960. Surely petitioners have no reasonable or valid basis of objection to the Court's forbearance to order all that it might have ordered in the way of effectuating the rights of all members of the class presented by respondents, especially since this forbearance benefits only the petitioners, in that it affords them more time to prepare to comply.

Petitioners' Reason 9

Petitioners seem to inveigh against the judgment below on the implied ground that it orders parties not before the Court to desegregate schools. This implication is not correct.

Some of the petitioners now seeking certiorari, viz: the local school boards, in argument, written or oral, for affirmance of Judge Leahy's decree, in 1958, when the State Board appealed to the Court of Appeals, took a position consistent with their pleadings in the district court. Local Board answers to the complaint (RA9) had averred that all the communities in Delaware where school segregation prevailed, namely, those in southern Delaware, are essentially similar sociologically, so as to constitute what

amounts to a single community." Therefore, they contended, in order to make "integration" effective in the seven communities whose local school boards were joint defendants with the State Board, it was necessary that desegregation be "general and schematic," applying not merely to those seven communities, but throughout all segregated school districts in Delaware. *Id.*

Judge Leahy adopted this view and, as we have previously mentioned, concluded that circumstances in Delaware did require simultaneous desegregation throughout all segregated school districts in the State. He concluded further that the statutes gave control over all Delaware public schools to defendant State Board. As paragraph 5 of his decree (A16) states, "to further obtain and effectuate" desegregated education, he ordered the defendants having the power, State Board, to desegregate throughout this southern Delaware area.

In reversing District Judge Layton's unauthorized order the judgment below has the effect of restoring the decree of Judge Leahy which the Court of Appeals formerly had affirmed. That decree orders the appropriate defendants, the State Board and State Superintendent, who administer all Delaware schools, to desegregate all segregated schools. It does not, as implied by petitioners, command persons not parties to the action, nor purport to command compliance by school boards in nonsegregated districts. Such simultaneous desegregation of the sociologically similar, segregated school communities not among the seven school districts in this litigation was precisely what the local boards that have joined the State Board in the petition before this Court, both to Judge Leahy and in the earlier appellate history of this litigation, represented was the only effective procedure for bringing about desegregation in Delaware. That they should now have deserted that position and have allied themselves with the

State Board in seeking to uphold the twelve-year plan gives rise to the inference that they want merely to prevent the plaintiffs from realizing their constitutional rights and, presumably, out of deference to hostility they have asserted exists, so protract desegregation as to render it ineffective.

CONCLUSION

Petitioners seek review of a judgment entered by the Court below to displace unauthorized interference with its mandate and to prevent obliteration of constitutional rights of the respondent school children.

The decision below was clearly correct and no interest of justice requires review. It is respectfully urged that the petition for certiorari should be denied.

Respectfully submitted,

Louis L. Redding,
Attorney for Respondents.

APPENDIX

Complaint Filed against State Board of Education, State Superintendent of Public Instruction, and the Board of Education of the Laurel Special School District, printed as Model of Complaint Filed in All Seven Actions.

1. (a) The jurisdiction of this Court is invoked under Title 28, United States Code, section 1331. This action arises under the Fourteenth Amendment of the Constitution of the United States, section 1 and Title 42, United States Code, section 1981. The matter in controversy exceeds, exclusive of interest and costs, the sum or value of Three Thousand Dollars ($3,000.00).

(b) The jurisdiction of this Court is also invoked under Title 28, United States Code, section 1343. This action is authorized by Title 42, United States Code, section 1983, to be commenced by any citizen of the United States or other person within the jurisdiction thereof to redress the deprivation, under color of a state law, statute, ordinance, regulation, custom or usage, of rights, privileges and immunities secured by the Fourteenth Amendment of the Constitution of the United States, section 1, and by Title 42, United States Code, section 1981, providing for the equal rights of citizens and of all persons within the jurisdiction of the United States.

(c) This is an action for an interlocutory and permanent injunction restraining, upon the ground of unconstitutionality, the enforcement of provisions of the administrative order and regulations of the defendants, as members of the State Board of Education, and the customs, practices and usages of defendant members of the State Board of Education and of defendant members of the

Complaint Filed against State Board of Education, State Superintendent of Public Instruction, and the Board of Education of the Laurel Special School District

Board of Education of the Laurel Special School District requiring segregation in public education in the Laurel Special School District, in Sussex County, State of Delaware, by restraining defendants from enforcing such administrative orders and regulations, customs, practices and usages.

2. Plaintiffs bring this action pursuant to Rule 23 (a) of the Federal Rules of Civil Procedure for themselves and on behalf of all Negroes similarly situated, whose numbers make it impracticable to bring them all before the court; they seek common relief based upon common questions of law and fact.

3. Plaintiffs are among those classified as "colored," of Negro blood and ancestry, and are citizens of the United States and the State of Delaware. They are residents of the Town of Laurel, State of Delaware. Adult plaintiffs are parents or guardians of minor plaintiffs.

4. (a) Defendants Madeline Buchanan, Clayton A. Bunting, Byard V. Carmean, Irvin S. Taylor, Vincent A. Theisen and Marvel O. Watson, are members of the State Board of Education, an administrative agency of the State of Delaware, and as such are under a duty to determine the educational policies of the State of Delaware and to adopt rules and regulations for the administration of the free public school system of the State of Delaware, to appoint such professional and other assistants as are necessary for carrying out the policies, rules and regulations of the State Board of Education, and to decide all controversies and disputes involving the administration of the public school system.

Complaint Filed against State Board of Education, State Superintendent of Public Instruction, and the Board of Education of the Laurel Special School District

(b) Defendant George R. Miller, Jr., is Executive Secretary of the State Board of Education and State Superintendent of Public Instruction, a statutory officer of the State of Delaware.

(c) Defendants William E. Prettyman, Ford M. Warrington, Harry G. McAllister and W. Pierce Ellis are members of the Board of Education of the Laurel Special School District in Sussex County, State of Delaware, are vested with the duty of the general administration and supervision of the free public schools and the educational interests of the said Laurel Special School District and with the further duty to determine the educational policies of said Special School District, to appoint a Superintendent of Schools and other employees of said Special School District, and to decide all controversies and disputes involving the rules and regulations of the Laurel Special School District and the proper administration of the public schools of said Special School District.

5. In August, 1955, adult plaintiffs petitioned the defendant members of the Board of Education of said Laurel Special School District to take immediate steps to reorganize the public schools under the jurisdiction of said Board of Education on a racially nondiscriminatory basis and to eliminate racial segregation in said schools, so that children of public school age be not denied admission to said schools or be required to attend any school, solely because of race or color.

6. Defendant members of the Board of Education of Laurel Special School District have officially stated, inter alia, that "the plans released from Federal and State Authorities have not been specific as to whether compulsory

desegregation shall be in effect" and have stated further that they have "advised the people and the State Board of Education that segregation shall be preserved as long as it does not violate the law," and have failed and refused to reorganize the public schools under their jurisdiction on a racially nondiscriminatory basis and to eliminate racial segregation in said public schools.

7. On February 10, 1956, on behalf of plaintiffs, the failure and refusal of defendant members of the Board of Education of the Laurel Special School District to reorganize the public schools in the Laurel Special School District on a racially nondiscriminatory basis and to eliminate racial segregation in said public schools was called to the attention of defendant members of the State Board of Education and the latter were requested immediately to desegregate the public schools of the Laurel Special School District.

8. On March 15, 1956, defendant members of the State Board of Education, by official action, unanimously refused to comply with the plaintiffs' request to desegregate said public schools.

9. Plaintiffs and those similarly situated suffer and are threatened with irreparable injury by the acts herein complained of. They have no plain, adequate or complete remedy to redress these wrongs other than this suit for an injunction. Any other remedy would be attended by such uncertainties and delays as to deny substantial relief, would involve multiplicity of suits, cause further irreparable injury and occasion damage, vexation and inconvenience not only to the plaintiffs and those similarly situated, but to defendants as governmental agencies.

Complaint Filed against State Board of Education, State Superintendent of Public Instruction, and the Board of Education of the Laurel Special School District

Wherefore, plaintiffs respectfully pray that:

(a) The Court advance this cause on the docket and order a speedy hearing of the application for interlocutory injunction and the application for permanent injunction according to law, and that upon such hearings:

(b) The Court enter interlocutory and permanent judgments declaring that any administrative orders, regulations and rules, customs, practices and usages pursuant to which plaintiffs are segregated with respect to their schooling because of race, color or ancestry violate the Fourteenth Amendment of the United States Constitution.

(c) The Court issue interlocutory and permanent injunctions ordering defendants to admit infant plaintiffs and all others similarly situated to the public schools in the Laurel Special School District on a racially nondiscriminatory basis with all deliberate speed.

(d) The Court allow plaintiffs their costs and such other relief as may appear to the Court to be just.

Louis L. Redding
Attorney for Plaintiffs
923 Market Street,
Wilmington 7, Delaware.

Answer of State Board of Education and State Superintendent of Public Instruction, Printed as Model of Answer of These Defendants in All Seven Actions.

1. As to allegations of fact, defendants are without knowledge or information sufficient to form a belief as to the truth of these averments.

Answer of State Board of Education and State Superintendent of Public Instruction

2. As to allegations of fact, defendants are without knowledge or information sufficient to form a belief as to the truth of these averments.

3. It is admitted that the plaintiffs have not been accepted in the public school under the jurisdiction of Laurel Special School District. It is admitted that said Laurel Special School District has not heretofore taken as students persons of Negro blood and ancestry. Except as herein admitted, defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining averments of fact set forth.

4. (a) It is admitted that the defendants Madeline Buchanan, Clayton A. Bunting, Byard V. Carmean, Irvin S. Taylor, Vincent A. Theisen and Marvel O. Watson, are members of the State Board of Education, an administrative agency of the State of Delaware. The duties of said State Board of Education are those set forth in Title 14, Delaware Code 1953, as amended.

(b) Admitted.

(c) Admitted except that the status and duties of the Board of Education of the Laurel Special School District are determined by Title 14, Delaware Code, 1953, as amended.

5. These defendants are without knowledge or information sufficient to form a belief as to the truth of these averments.

6. Admitted that the quotations set forth in Paragraph 6 of the Complaint are from a letter of the Laurel Special School District to State Superintendent dated August 9, 1955. Reference is made to said letter for the statements

of the said Laurel Special School District contained therein. Except as so admitted, these defendants are without knowledge or information sufficient to form a belief as to the truth of other averments in this paragraph.

7. Admitted that by letter of February 10, 1956, the attorney for plaintiffs advised that "parents of negro school children living in Laurel, Delaware, by petition forwarded to the Board of Education of the Laurel Special School District under date of August 10, 1955, requested that Board to take immediate steps to reorganize the public school of Laurel Special School District on a racially nondiscriminatory basis." Admitted that the State Board of Education was requested to "immediately desegregate the public schools of the Laurel Special School District * * *."

8. Admits that by letter of March 16, 1956, the State Board of Education stated that for reasons set out in said letter it could not comply with the request to immediately desegregate the said public school. The State Board's policy, referred to in said letter of March 16, 1956, calling for joint action initiated by the local Board of Education was considered and approved by the Supreme Court of the State of Delaware in the case of Steiner et al. v. Simmons et al., 111 A. 2d 574, decided February 8, 1955, to which opinion reference is hereby made.

9. The averments in this paragraph are conclusions of law which are before this Court for determination.

WHEREFORE, these defendants pray that the Court dismiss said complaint or enter such order as shall appear to be proper and just.

JOSEPH DONALD CRAVEN,
Attorney General.
HERBERT L. COBIN,
Chief Deputy Attorney General.

Answer of Board of Education of Laurel Special School District, Printed as Model of Answers Filed by Local School Boards in All Seven Actions.

Defendant members of the Board of Education of the Laurel Special School District answer plaintiffs' complaint as follows:

FIRST DEFENSE

1. (a) If any facts are alleged in paragraph "1(a)", these defendants deny knowledge of the same and demand strict proof thereof.

(b) Same as the answer to "a".

(c) Denied that any pertinent administratives orders or regulations have ever been made or promulgated by these defendants. In so far as "customs, practices, and usages" are concerned, it is admitted that the customs, practices and usages have heretofore been for white pupils only to apply for admission to white schools, and for colored pupils only to apply for admission to colored schools, but it is denied that any colored pupil has applied for admission to any white school under the jurisdiction of these defendants since the Supreme Court handed down its second decision in *Brown* v. *The Board of Education of Topeka*.

2. Same as the answer to "1(a)".

3. Admitted.

4. (a) Admitted.

(b) Admitted.

(c) Admitted.

Answer of Board of Education of Laurel Special School District

5. Admitted with respect to all adult plaintiffs, with the exception of Christa Cottman, who did not sign the petition.

6. It is admitted that the statement quoted in paragraph "6" was made by the Superintendent of Schools of the Laurel Special School District with approval of the members of the Laurel Board. The bare quoted statement fails to point out the fact that the Laurel Board had appointed a study committee to consider this problem and they hereby drew out more clearly some of the problems in bringing about public acceptance of integration.

(a) The opposition to school integration in the Laurel community is so widespread and of such an emotional character that any action apparently initiated by the local board looking toward integration, and not clearly forced upon the local board by some agency higher in authority than these defendants, would be either ignored completely or overridden by force.

(b) Neither the local board nor the local police authorities possess any such facilities for the maintenance of law and order as would be required to enforce the first small step toward integration in the Laurel Schools so long as there are numerous other schools in the vicinity of Laurel in which integration is not being likewise enforced.

(c) All the communities in Delaware, south of Dover, despite individual differences and special problems, are essentially similar sociologically, so as to constitute what amounts to a single community. Enforcement of integration in the Laurel Schools, without substantially simultaneous enforcement throughout this same community, and without any systematic plan affecting this entire larger

community, would be calculated to inflame resentment as to increase the likelihood of violence, and this is equally true even if the Court should take exactly the same step in all the other communities in which the school authorities were sued at the same time this action was brought. Whatever reasons may have prompted the filing of this particular group of suits, those reasons are not related to the problem of enforcement, and it would be difficult, if not impossible, for these defendants to explain to the public why Laurel would be treated differently from other neighboring communities. Enforcement, therefore, in Laurel or in all of the several other school districts in which the school authorities were sued at the same time as Laurel would not further the "elimination of such obstacles in a systematic and effective manner", as those words were used in the second decision of *Brown* vs. *Topeka*. If there is to be an "effective and systematic approach, it must be general and schematic, applying not merely to Laurel, but throughout the adjoining communities as well.

(d) Nothing stated in this answer necessarily reflects the feelings or preferences of any of the individual members of the Laurel Board. It represents an effort to lay before the court what these defendants believe to be pertinent facts.

7. These defendants have no knowledge of the truth of the allegations of paragraph "7" and, if the same are material, will hold the plaintiff to strict proof thereof.

8. Same as the answer to "7".

9. Denied that injunction against these defendants is an appropriate or available remedy. Further, defendants believe and aver that, owing to the intensity of public

seeing, irreparable injury to the plaintiffs and to those whom the plaintiffs represent could result from having plaintiffs' prayers for relief granted too soon and too completely. As to the remaining allegations of said paragraph "9" the defendants disclaim such knowledge as would enable them to admit or deny the same, and if they prove material, will hold plaintiffs to strict proof thereof.

SECOND DEFENSE

10. These defendants here re-allege by reference the same answers to the complaint as were spelled out in the first defense.

11. And as an additional defense, these defendants say that the school building under the jurisdiction of the Laurel Special School District and heretofore used for white pupils only is presently overcrowded and inadequate, and is growing increasingly so. The present General Assembly has included Laurel in its appropriation for the school building program which is currently being delayed by a dispute over architects' fees. For this reason admitting colored children to the white school at this time would merely further overtax an already overtaxed facilities, provide confusion, increase discomfort and make the education of pupils of all races more difficult.

WHEREFORE, these defendants respectfully pray that the Court will hear the cause and dismiss this action, as to them, with costs.

JAMES M. TUNNELL, JR.
James M. Tunnell, Jr.
Georgetown, Delaware
Attorney for Defendants.

Excerpt from Argument Before Chief District Judge Leahy on April 5, 1957

* [1] Mr. Cobin: * * The State Board has already addressed to the local boards a directive which has the force of law, which has not been complied with.

The Court: Well, what has the Attorney General been doing about it? If their directive, according to the Supreme Court of Delaware, has the force of law, why don't you enforce it?

Mr. Cobin: Well, your Honor, the Attorney General has taken the same position as has been carried on in the other states, of waiting until a problem has arisen in each local district. Some districts have voluntarily gotten up plans of desegregation, for example, Wilmington, Delaware City, Christiana—

The Court: How about the local districts that have not?

Mr. Cobin: Well, we have eight of those—or seven of those districts now before your Honor.

The Court: Why do you make Mr. Redding carry the ball? If the regulations and the directive have the force of law, why doesn't the Attorney General of Delaware enforce them? Why make these private citizens come into a Federal Court to have their rights protected?

Mr. Cobin: Well, your Honor, we do not know precisely in how many areas or who in any particular area desire [2] to attend a heretofore white school. It is not desirable to leave that to the application of children.

The Court: Well, your State agency has seen fit to issue directives. Now, why shouldn't there be some intelligent report made as to whether those directives have been carried out, and if they have not been carried out, why is it not the duty of the Attorney General?

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* Herbert L. Cobin, Chief Deputy Attorney General of the State of Delaware.

Excerpt from Argument Before Chief District Judge Leahy on April 5, 1957

Mr. Cobin: The Attorney General would then have to file approximately 90 or more suits.

The Court: Well, what difference does that make? He is a public servant. Why make Mr. Redding's clients carry the ball?

Mr. Cobin: Well, we are taking the position, as has been taken, that we will leave this matter to the plaintiffs who desire to enter a school, and if they are refused, that we will then support the State Board in that litigation.

The Court: Well, what about these plaintiffs here in these cases? Why haven't you protected them?

Mr. Cobin: Well, we are in the process of doing that now, your Honor.

The Court: Where?

Mr. Cobin: In this court.

The Court: You haven't filed any pleadings in this court.

Mr. Cobin: No, no, but we are

The Court: The Attorney General doesn't enforce the law in this court.

Mr. Cobin: He can.

The Court: Well, I have a query.

Mr. Cobin: This court has jurisdiction.

The Court: No question about that. But if the State Board and the Supreme Court of Delaware has said that their directives and regulations have the force of law, why do you sit back and see that it is not enforced?

Mr. Cobin: Because we feel that it is desirable, instead of having a mass number of suits, with the hope that these other boards will eventually voluntarily, as a few of these cases are decided, the rest of the boards will voluntarily submit plans and comply with the law. I think, your Honor, that that eventually will be the way the thing will work out.

The Court: I have no further questions.

Excerpt from Argument Before Chief District Judge Leahy on July 9, 1957, on Motions for Consolidation and for Summary Judgment against the State Board of Education and the State Superintendent of Public Instruction

(Later, in the course of Mr. Redding's reply, the following occurred:)

Mr. Redding: The State Board is a defendant here, in each one of these cases, and while I must say that [4] Mr. Cobin has in my opinion come through in some sort of fashion this morning, I think that a reading of the answers filed by the State Board in each of these cases and by the local boards will show that there is buck-passing. The State Board says it is the duty of the local boards, and the local boards have said that the devising of a plan of desegregation is the duty of the State Board.

The Court: And the last buck to be passed is to the Court.

Mr. Redding: That is correct, sir.

Excerpt from Argument Before Chief District Judge Leahy on July 9, 1957, on Motions for Consolidation and for Summary Judgment against the State Board of Education and the State Superintendent of Public Instruction

[1] The Court: Who is next?

Mr. Craven:* I might say by way of introduction, your Honor, that the position of the State Board is consistent with what it has been heretofore and that the change in position is that of Mr. Redding in the matter. He first obtained a summary judgment against the Clayton School Board and as far as I know and the record indicates nothing further has been done with that summary judgment

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* Joseph Donald Craven, Attorney General of the State of Del-

Excerpt from Argument Before Chief District Judge Leahy on July 9, 1957, on Motions for Consolidation and for Summary Judgment against the State Board of Education and the State Superintendent of Public Instruction

I can see that it would be a matter of greater convenience to the plaintiffs in this case if the whole burden were to be placed on the State Board of Education to come up with some plan that was worked out which the State Board would take the responsibility for and in saying that this would be the answer to the whole problem.

The Court: Mr. Craven, may I ask an informational question? On April 1, 1957, in the Clayton School District No. 119 case, which is our Civil Action 1816, the State Board was ordered within 60 days from that date to file with this Court a plan of integration. Did you take an appeal from that order to the Court of Appeals?

Mr. Craven: You mean the Clayton Board was ordered?

The Court: No, you were ordered. Members of the [2] State Board. I will quote from the order. (The Court read the order referred to.) Did you take an appeal from that order?

Mr. Craven: No, there was a stay, your Honor. Your Honor issued a stay in that case based on the appeal that was taken by the Clayton Board.

The Court: Now, my next question is this: I am familiar with the facts in this case. The Clayton Board did not perfect its appeal. In fact, this Court had all the records returned from the Court of Appeals. Have you done anything subsequently to that?

Mr. Craven: No. The State Board has done nothing, and I assume the State Board assumed, as I did, as we did in the office, that any further action would be taken by Mr. Redding, the plaintiff.

The Court: It appears to be a cat and mouse game.

Excerpt from Argument Before Chief District Judge Leahy on July 9, 1957, on Motions for Consolidation, and for Summary Judgment against the State Board of Education and the State Superintendent of Public Instruction

Mr. Craven: The plaintiffs obtained the summary judgment, your Honor, and the order provided that the local board was to submit, as your Honor recalls—

The Court: The Court granted you the courtesy of a stay, and then when you were apprised of the fact that the appeal was aborted nothing was done toward making a plan under the order of April 1, 1957.

Mr. Craven: Nothing was done, your Honor.

The Court: Very well, I have no further questions. You may proceed with your argument.

[3] Mr. Craven: Well, the position of the State Board is merely being reiterated here this morning that the local board in the Clayton case was requested—in fact, was directed—I have it before me—"such plan by the local board shall be submitted to the State Board within a period of thirty days and within sixty days the State Board of Education shall submit its plan to the Court for further instruction." In other words, the Court took the position at that time that it was the primary responsibility of the local board to submit its plan to the State Board and the State Board feels that that was correct in that instance and that should be followed.

The Court: That was in that particular case.

Mr. Craven: In that particular case. That hasn't set a precedent—

The Court: I do not accept this statement, that it was a precedent.

Mr. Craven: Your Honor will recall that I am not representing the State Board, and the State Board has instructed me as to what its position is in the matter as far as that is concerned. There isn't any question but what the Court can issue its directive either to the local

Excerpt from Argument Before Chief District Judge Leahy on July 9, 1957, on Motions for Consolidation and for Summary Judgment against the State Board of Education and the State Superintendent of Public Instruction

boards or to the State Board as such, but the State Board does feel that it is up to the local boards to submit a plan first to them and that they are prepared to confer with the Court and with the local boards to assist in every way possible.

[4] I suppose that is no different from what our original brief was in the Clayton case, except in that case we suggested the—the State Board suggested that the plan be submitted by the local boards directly to the Court, which of course this Court did not accept, and the State Board has declared it is willing to cooperate in every possible way with the local boards, but still feels that the initiative should come from the local boards.

The Court: Suppose they do not propose a plan in terms of this side of eternity, how long will the State Board remain inactive?

Mr. Craven: I suppose until this Court issues an order and a directive.

The Court: Very well. I have your point.

Excerpt from Mandate of Court of Appeals, 3rd C. Issued June 30, 1958, and Subsequently Reissued.

And Whereas, the said cause came on to be hear before the said United States Court of Appeals for th Third Circuit, on the said record, and was argued b counsel;

On Consideration Whereof, it is now here ordere and adjudged by this Court that those portions of th decree of the District Court in this case, which states date for the submission of the plan by the State Board o Education to the District Court and to each member o all the school boards in all of the public school district which heretofore have not admitted pupils under a racially non-discriminatory plan, be and the same are hereb vacated, so that the District Court will be free to tak appropriate action; and that in all other respects the de cree of the said District Court in this case be, and th same is hereby affirmed.

You, Therefore, Are Hereby Commanded, that, suc proceedings be had in said causes, in conformity with th opinion and judgment of this court, as according to right and justice, and the laws of the United States, ought to be had, the said appeals notwithstanding.

Signed and sealed this 30th day of June in the yea of our Lord one thousand nine hundred and fifty eight.

Ida O. Creskoff
Clerk, United States Court
of Appeals for the Third Circu

Opinion of Court of Appeals, 3rd C. re Recall of Mandate, Filed July 23, 1958.

By Biggs, *Chief Judge*.

The mandate of this court which was handed down on June 30, 1958 will be recalled, subject to the proviso that if the appellants have not filed a petition for writs of certiorari to the Supreme Court of the United States on or before August 14, 1958, and have not filed with the Clerk of this court a certificate to such effect by August 18, 1958, the mandate of this court shall issue forthwith to the court below to carry out and effect the judgments of this court.

We take this step so that the appellants, by application to the Supreme Court for writs of certiorari, may exhaust their legal remedies without the possible complication of the cases becoming moot by action of the court below effecting our judgments.

I am authorized to state that Judge Kalodner dissents and is of the view that in the light of all the circumstances, including the delay of the appellants in making application to this court in respect to the mandate, that the mandate should not be recalled.

A true Copy:

Ida O. Creskoff

Teste:

Clerk of the United States Court of Appeals for the Third Circuit.

Order of Judge Layton of November 19, 1958

Pursuant to the decree of this Court entered July 1957, and the mandate of the Court of Appeals for Third Circuit vacating those portions of said decree w state dates for the submission of the plan of desegrega by the State Board of Education to this Court and to member of all the school boards in all the public sc districts which heretofore have not admitted pupils u a racially non-discriminatory plan, and affirming the de in all other respects,

IT IS ORDERED THAT:

1. The minor plaintiffs in the respective cases and other Negro children similarly situated are entitled admittance, enrollment and education, on a racially discriminatory basis, in the public schools of Clayton Sc District No. 119, Milford Special School District, Gre wood School District No. 91, Milton School District N Laurel Special School District, Seaford Special School trict and John M. Clayton School District No. 97.

2. The defendants are permanently enjoined and strained from refusing admission, on account of race or ancestry of respective minor Negro plaintiffs and other children similarly situated, to the public sc maintained in the respective above-mentioned school districts.

3. Defendant members of the State Board of Educ and defendant George R. Miller, Jr., State Superintend of Public Instruction, shall submit to this Court wi one hundred five days from the date of this order a of desegregation providing for the admittance, enroll and education on a racially nondiscriminatory basis, th Fall Term of 1959, of pupils in all public school dis

the State of Delaware which heretofore have not ad-
ted pupils under a plan of desegregation approved by
State Board of Education.

4. The members of the State Board of Education, as
mptly as possible and within fifty days from the date
this order:

(a) Shall inform each school board of a public school
trict which heretofore has not admitted pupils under
plan of desegregation approved by the State Board of
ucation that a plan of desegregation affecting such public
ool district is to be prepared by the State Board of
ucation and is to be submitted to this Court by the
te Board of Education;

(b) Shall make arrangements for consultation and carry
such consultation with each district school board named
his action relative to the plan of desegregation to be
pared by the State Board of Education for submission
d to this Court; and

(c) Shall inform each such district school board named
his action of the arrangements made by the State Board
Education for consultation with the district school
rds relative to the plan of desegregation to be prepared
the State Board of Education for submission to this
urt.

5. The members of the State Board of Education, with
fifty-five days from the date of this order, shall transmit
writing to each district school board in all public school
tricts of the State of Delaware which heretofore have
admitted pupils under a plan of desegregation ap-
ved by the State Board of Education at least four
ys of the plan of desegregation herein ordered to be
mitted to the Court, together with a copy of this Order.

Order of Judge Layton of November 19, 1958

6. Within fifty days after receiving a copy of the plan of desegregation of the State Board of Education, members of district school boards may further consult with and may make recommendations to, the State Board of Education relative to the plan of desegregation; and the State Board of Education may make such revision of the plan as it deems appropriate.

7. A copy of the plan of desegregation of the State Board of Education shall be transmitted to all district school boards which have not admitted pupils under a plan of desegregation approved by the State Board of Education and, further, shall be served on the plaintiffs on the date said plan is submitted to this Court.

8. A hearing shall be held before this Court on the plan of desegregation of the State Board of Education on Tuesday, March 17, 1959, at 10:30 o'clock in the forenoon and, at said hearing, the parties and all district school boards desiring to be heard shall be heard.

CALEB R. LAYTON, 3rd.
Judge

Date: November 19, 1958.